

STATEMENT OF EMERGENCY
921 KAR 1: 400E

This emergency administrative regulation is necessary to ensure that the Worksheet for Monthly Child Support Obligation (CS-71) and the Worksheet for Monthly Child Support Obligation Exception (CS-71.1) are updated to coincide with the June 29, 2021 effective date of House Bill 404 (Ky Acts Chapter 47), passed in the 2021 regular session that updated the child support guidelines table. The above-referenced forms are used in conjunction with the guidelines table to establish or modify a child support obligation. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a) 3, as the administrative regulation is necessary to meet an imminent deadline to coincide with the effective date of House Bill 404, which amended Kentucky Revised Statute 403.212. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Division of Child Support Enforcement
(Emergency Amendment)

921 KAR 1:400E. Establishment, review, and modification of child support and medical support orders.

EFFECTIVE: June 29, 2021

RELATES TO: KRS 205.710-, 205.802~~[-205.800]~~, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and ~~[necessary]~~ to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate and adopt administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

- (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation; ~~[or]~~
- (b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other form incorporated by a regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430 and 454.220.

(5) In addition to the deductions specified in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as specified in KRS 403.212(2)(h[g])3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

1. There is a support order; and

2. A copy of the child support obligation worksheet is obtained; or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

1. There is no support order;

2. There is a support order, but no support obligation worksheet; or

3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or

(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity;

(b) Establish a child support or medical support obligation; or

(c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

(a) Send to the custodial parent or nonparent custodian forms:

1. CS-133, Custodial Parent Information Request;

2. CS-132, Child Care Expense Verification; and

3. CS-136, Health Insurance Information Request;

(b) Send to the custodial parent the CS-65, Statement of Income and Resources;

(c) Send to the noncustodial parent forms:

1. CS-64, Noncustodial Parent Appointment Letter;

2. CS-65, Statement of Income and Resources;

3. CS-132, Child Care Expense Verification; and

4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

1. Custodial parent; or

2. Noncustodial parent, or obligor; and

(e) Issue a CS-84 Administrative subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall set the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

(a) Administratively upon notice to the obligor or obligee; or

(b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to re-request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

(a) Either parent;

(b) The state agency with assignment; or

(c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

(a) Conduct the review;

(b) Modify the order; or

(c) Determine the circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as defined in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;

(b) "CS-65, Statement of Income and Resources", 6/2021 [~~12/15~~];

(c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;

(d) "CS-71, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", 6/2021 [~~3/10~~];

(e) "CS-71.1, Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", 6/2021 [~~3/10~~];

- (f) "CS-79, Notification of Review Determination", 3/10;
- (g) "CS-84, Administrative Subpoena", 8/18;
- (h) "CS-130, Income Information Request", 3/10;
- (i) "CS-132, Child Care Expense Verification", 3/10;
- (j) "CS-133, Custodial Parent Information Request", 3/10; and
- (k) "CS-136, Health Insurance Information Request", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

STEVEN P. VENNO, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 3, 2021

FILED WITH LRC: June 29, 2021 at 11:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 23, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 16, 2021, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mary W. Sparrow or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review and modification of child and medical support orders in accordance with 42 U.S.C. 651-654, 656, 666, 667, 669B and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child

support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides an update in a citation after HB 404 (2021 session) became law as well as updating material incorporated by reference: Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation (CS-71) and the Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception (CS-71.1).

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update a citation and to update material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying the criteria used by the Cabinet in establishing, reviewing, and modifying child support and medical support orders. This amendment identifies each party that has a right to request a review or modification of the child or medical support order, conforming to 45 C.F.R. 303.8. This amendment also identifies KRS 403.212 and 403.211(5) as the laws governing how child support obligations are determined.

(d) How the amendment will assist in the effective administration of the statutes: The forms being revised have been updated to reflect the changes implemented in HB 404 (2021) in regard to determining and establishing a child support obligation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Administrative Office of the Courts – Judges and Staff

Private Attorneys

Child Support Enforcement Attorneys and Staff

Participants in the Child Support Program

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Administrative Office of the Courts – must educate the Judiciary regarding the new Worksheet for Monthly Child Support Obligation and the Worksheet for Monthly Child Support Obligation Exception.

Private Attorneys – will access the updated information to become familiar with the revised forms.

Child Support Enforcement Attorneys and Staff – will receive guidance from the Child Support Program regarding the revised forms.

Participants with new or cases where participants request a review and possible modification, will access or be provided by a child support office, the revised forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities but provides updated forms for determining an obligation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. Once updated on our websites, no additional costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state general funds and federal funds under 42 U.S.C. 401-419, Title IV-D of the Social Security Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302 and 303, 42 U.S.C. 651-654, 656, 666, 667, 669B.

2. State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, 405.991, 406.021, 406.025 and 454.220.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1),

667, and 669B. 45 C.F.R. 302 and 303. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.550, and 405.991.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on Child Support Enforcement program websites. This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on the Child Support Program's computer system and website. This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: